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COMMITTEE AGAINST TORTURE

Twenty-fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 425th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 10 May 2000, at 3 p.m.

Chairman: Mr. BURNS

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Third periodic report of Paraguay (continued)

Initial report of El Salvador (continued)

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.425/Add.1.

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Third periodic report of Paraguay (continued) (CAT/C/49/Add.1)

Conclusions and recommendations of the Committee against Torture (CAT/C/XXIV/Concl. 4)

1. At the invitation of the Chairman, the members of the delegation of Paraguay took places at the Committee table.

2. Mr. GONZÁLEZ POBLETE (Country Rapporteur) read out the following concluding observations and recommendations:

1. The Committee considered the third periodic report of Paraguay (CAT/C/49/Add.1) at its 418th, 421st and 425th meetings, held on 5, 8 and 10 May 2000, (CAT/C/SR.418, 421 and 425), and adopted the following conclusions and recommendations.

A. Introduction

2. The third periodic report of Paraguay, submitted within the time-limit provided for in article 19 of the Convention, was not in conformity with the general guidelines regarding form and contents adopted by the Committee at its twentieth session.

3. During the introduction of the report and while hearing and replying to the comments and views of the members of the Committee, the representatives of Paraguay provided comprehensive information which made up for the report's shortcomings.

B. Positive aspects

4. The entry into force of the new Penal Code and the gradual application of the changes introduced by the new Code of Criminal Procedure, whose enforcement should enable the State better to fulfil its obligations under the Convention.

5. The innovations introduced by the Penal Code, including the extension of its application to the punishment of acts committed abroad against rights which are universally protected under an international treaty, a provision which is in keeping with article 5 of the Convention.

6. The exclusion of the probative value of any statement which is contrary to procedural guarantees provided for in the Constitution and in international law, as required by the new Code of Criminal Procedure, thus giving national courts binding jurisdiction, in accordance with article 15 of the Convention.

7. The imposition of harsh sentences for human rights violations committed during the dictatorship overthrown in 1989.

8. Programmes for the training of judges and police officers under the new criminal law system and the guarantees for which it provides.

C. Factors and difficulties impeding the application of the Convention

9. The failure to establish the Office of the Ombudsman eight years after the entry into force of the 1992 Constitution, which provided for it, and more than four years after the promulgation of the Organization Act. The Committee hopes, as the representatives of Paraguay said, that the legislative procedure for the appointment of the Ombudsman will be completed soon and that the Office of the Ombudsman will be given all the necessary resources to perform its functions throughout the national territory.

10. The lack of programmes for redress and the rehabilitation of the physical and mental health of the victims of torture, as required by article 14 of the Convention, and the legal rules which require them to file a claim for redress and compensation against the property and assets of their torturers; only if the victims are determined to be insolvent may they file their claim against the State. The Committee did not receive information on any case in which a victim of torture obtained the right to redress.

D. Principal subjects of concern

11. In the legislation in force, torture is not defined as an offence in accordance with article 1 of the Convention. The offence provided for in the new Penal Code does not include basic elements of the offence described in the Convention.

12. The information the Committee received from reliable sources that the practice of torture and cruel, inhuman or degrading treatment or punishment continues in police stations and in Armed Forces prisons and premises, where soldiers performing compulsory military service are subjected to frequent physical ill-treatment.

E. Recommendations

13. The prompt appointment of the Ombudsman and the provision of sufficient resources to enable his Office to establish its presence throughout the national territory.

14. The inclusion in the Penal Code of provisions defining torture as a crime in accordance with article 1 of the Convention.

15. The legal regulation of the right of victims of torture to redress and fair and adequate compensation at the expense of the State, which must then institute proceedings against the guilty parties in order to recover what it has had to pay out for this purpose. The State should also provide the necessary treatment for the rehabilitation of victims.

16. The Committee welcomes with satisfaction the announcement by the representatives of Paraguay that a ratification bill will soon be submitted recognizing the competence referred to in articles 21 and 22 of the Convention.

3. Mr. RAMÍREZ BOETTNER (Paraguay) thanked the members of the Committee for their open-minded approach and the frankness of their comments. Although his delegation was fully aware that Paraguay's third periodic report was not as complete as the Committee's general guidelines required, it would like the Committee to note the major difficulties his Government had faced in attempting to reflect aspects of the human rights situation in Paraguay. During a troubled period in which attempts had been made to thwart the people's determination to consolidate democracy, necessitating urgent political solutions, many of the agencies involved had simply had no time to prepare information for such reports. Furthermore, as a landlocked country Paraguay stood somewhat apart from the rest of the world, so that even the genocide which had been committed had gone largely unremarked by the international community.

4. Among the positive aspects, he welcomed the Committee's citing of the new Penal Code and Code of Criminal Procedure: immense efforts had been made to bring Paraguay's penal system into line with international standards. He took note with approval of the Committee's recommendations.

5. Turning to the subjects of concern, he was pleased to announce that in the very near future elections would be held to appoint Paraguay's first Ombudsman. In the troubled period of upheaval following the end of dictatorship, that represented a major triumph for Paraguay's political parties. The other concerns listed, namely the absence of a full definition of torture in domestic legislation consistent with article 1 of the Convention, the continuing existence of torture and cruel, inhuman and degrading treatment in police stations, prisons and the armed forces, and the absence of rehabilitation programmes for torture victims, were matters for further consideration. Congress would have the last say in approving the relevant legislation, but in the meantime he asked the Committee to bear in mind that under Paraguay's Constitution international treaties took precedence over domestic law.

6. Though Paraguay had already taken major steps to establish universal respect for human rights, it was fully aware that its future efforts would require higher levels of education and greater resources. In that regard, he emphasized that developed countries, by blocking markets and subsidizing their own exports, often denied countries such as Paraguay the opportunity to trade competitively and thus develop their own resources for such undertakings.

7. The delegation of Paraguay withdrew.

The meeting was suspended at 3.15 p.m. and resumed at 3.30 p.m.

Initial report of El Salvador (continued) (CAT/C/37/Add.4)

8. At the invitation of the Chairman, the members of the delegation of El Salvador took places at the Committee table.

9. Mr. LAGOS PIZZATI (El Salvador) thanked the Committee for its appreciation of the format of his country's initial report, which was a tribute to the many bodies that had contributed to its preparation. Likewise, the Committee's recognition of El Salvador's efforts to give effect to the provisions of the Convention indicated the progress El Salvador had made in recent years in asserting and protecting human rights and in strengthening its democratic institutions. Above all, his delegation was grateful for the indications the Committee had provided of the areas in which changes to legislation and institutional practice might bring improvements. The thorough scrutiny of the initial report and of El Salvador's national legislation carried out by the Rapporteur and assistant Rapporteur, together with their perceptive comments, would greatly assist his authorities' efforts to fully implement their commitments under the Convention. No less welcome was the guidance several Committee members had provided on making future reports more complete and accessible.

10. He was afraid it would not be possible at the present stage to respond to requests for statistical information, which it would take some time to compile in collaboration with the agencies concerned but which would be transmitted to the Committee in writing as soon as possible.

11. With regard to the Rapporteur's comments on El Salvador's failure to make declarations under articles 21 and 22 of the Convention, the information available to his delegation indicated that the omission was not deliberate. In the light of the Rapporteur's comments, the delegation would recommend that the appropriate authorities should examine the question of making the declarations. His delegation also accepted the Rapporteur's analysis and arguments with regard to the conflicts that might arise when judges in El Salvador attempted to apply the definition of torture contained in domestic legislation to crimes covered by the Convention. Although it would be possible to demonstrate how the risk of such conflict could be reduced in certain cases through strict application of the rules of judicial interpretation - and El Salvador had certainly made significant progress in seeking to establish an adequate definition of torture in its legislation - his delegation accepted that the current definition left room for improvement. Accordingly, it would transmit the Committee's recommendations on the matter to the relevant authorities, with a view to amending the legislation so as to give full expression to the concept of torture contained in article 1 of the Convention.

12. In response to the Committee's comments on the absence of specific legislation dealing with refoulement in connection with article 3 of the Convention, he agreed that the inclusion of specific provisions would greatly facilitate the work of the administrative authorities in the areas concerned, although it regarded the current regulations and procedures for implementing article 3 as adequate. Moreover, since draft legislation on migration, refugees and the status of foreigners was currently being prepared, his delegation considered that it could feasibly be made to incorporate clear provisions expressly prohibiting the expulsion or return of any person to a State in which he might run the risk of being subjected to torture. An example of such legislation was the draft law on the status of refugees, soon to be transmitted to the Legislative Assembly for consideration. Chapter IX, article 47, entitled "On non-refoulement", read:

> "A refugee may not be expelled or returned to another country, be it or not his country of origin, in which his right to life, personal integrity, freedom and security are at risk of violation on grounds of race or ethnic origin, gender, religion or creed, nationality,

membership of a specific social group, or his political opinions, or because of generalized violence, foreign aggression, internal conflict, mass human rights violations or other disturbances of public order."

Given the amount of other legislation on such matters currently being prepared, the time was ripe for incorporating the Committee's recommendations on article 3 of the Convention.

13. Turning to the Committee's comments on the statistics kept by the Office of the Procurator for the Protection of Human Rights and on deficiencies in the clarification of human rights-related crimes, he said that the Procurator investigated cases in response to complaints from members of the public. The law governing the Procurator's Office, which had been in force since 1992, classified such crimes as follows: (a) torture; (b) cruel, inhuman or degrading treatment or punishment; (c) maltreatment; (d) disproportionate use of force; (e) inhuman treatment of prisoners. One of the results of an ongoing UNPD technical assistance project aimed at strengthening the functions of the Procurator for the Defence of Human Rights was a research protocol intended to establish a new classification of the human rights for whose protection the Procurator was responsible. Thus records of human rights violations, graded by degree of seriousness, which were kept by the Procurator's Office, showed that, since the 1992 peace accords, cases of torture had been diminishing rather than increasing in frequency.

14. The ending of armed conflict and the progress made in the areas of democratization and human rights since 1992 made it inappropriate to speak currently of "death squadrons" supposedly engaged in "social cleansing". On the other hand, a criminal reaction to the wave of delinquency beginning in 1996 had given rise to the self-styled "Black Shadow" group which, particularly in the east of the country, had carried out murders of delinquents and gang members. The civil police had succeeded in smashing the group and in capturing its members. Apart from the Black Shadow, there was no evidence of a resurgence of other groups carrying out vigilante activities.

15. As to whether the public prosecutor's office was the only body entitled to request a detention order, according to the Code of Criminal Procedure that was indeed the case.

16. Replying to questions raised by Mr. Silva Henriques Gaspar, he said there were ongoing mechanisms to evaluate training programmes for law enforcement officers. It was too soon, however, to assess the overall effectiveness of such programmes. Human rights training programmes for the prison system were conducted by the Prison Academy and by the regional and national Criminology Councils; their effectiveness was also monitored by those institutions. In addition, human rights awareness was included in retraining and promotion courses conducted by the National Public Security Academy.

17. The Inspector-General of the National Civil Police also conducted annual human rights awareness evaluations of police officers. The annual report described the means used to obtain such evaluations, presented the findings, and set forth general conclusions and recommendations for the National Public Security Academy and the National Civil Police. The purpose of the evaluation was to improve future performance. Some courses were conducted jointly by the National Public Security Academy and the Police Training Department.

18. A number of training courses were also administered by the European Union and the United Nations High Commissioner for Human Rights (UNHCHR), among other international bodies. The goals of the human rights technical cooperation programme conducted by UNHCHR included consolidating the public security model contained in Salvadoran law, and promoting the application of international human rights standards among law enforcement personnel. That programme involved the Ministry of Public Security, the National Civil Police, the National Public Security Academy, the Inspector-General of the National Civil Police, the Ministry of Justice, the Director-General of Prisons, and the Prison Academy.

19. The 1999 report on the impact of the technical cooperation programme on human rights in El Salvador noted that human rights training courses had had a positive effect on personnel, and had been especially useful in cultivating an understanding of women's rights. In general, the programme had had a significant impact on all the institutions involved. The number of requests received by the technical training programme for new training courses and for consultation testified to its importance.

20. Mr. Silva Henriques Gaspar had also asked whether the prison supervision courts could receive complaints from prisoners, where such complaints were filed, how they were handled, whether they were investigated, and whether disciplinary measures were applied. The prison supervision courts, recently-created judicial mechanisms, were among the most innovative instruments of that type in the world. The judges of those courts, who were fully independent of the Director-General of Prisons, were responsible for monitoring and ensuring strict compliance with the norms governing the enforcement of sentences and security measures, and with the rights of all persons deprived of their liberty.

21. There were currently 10 such courts, situated in the major cities, with jurisdiction over all places of detention. Judges were empowered to conduct periodic visits to prison facilities, and to interview prisoners who so requested. Oral or written complaints could be submitted by a prisoner or by any individual or group on his behalf. The judges were obliged to examine and resolve the complaint at an oral hearing attended by all parties, within 72 hours of its receipt. If the complaint was rejected, it could be resubmitted to the prison supervision appeal court - also a newly created mechanism.

22. If it was determined that a prisoner's rights had been violated, or that he had been subjected to an illegal measure or punishment, the judge ordered reinstatement of the complainant in his rights, notifying the Director-General of Prisons or the Ministry of the Interior, for appropriate action and disciplinary admonishment of the perpetrator of the violation.

23. Mr. MEJÍA TRABANINO (El Salvador) said that the creation of the Office of the Inspector-General of the National Civil Police had resulted from the 1992 peace agreements, and its role was to monitor and regulate the operational and administrative activities of the National Civil Police in respect of human rights. The Inspector-General was appointed by the Minister of Public Security, and must be approved by the Attorney-General and the Procurator for the Protection of Human Rights. The fact that he must be approved by two officials elected by the Legislative Assembly ensured his independence and legitimacy. The Inspector-General, who had a staff to assist him, was responsible for ensuring that police operations were professional

and technically up-to-date, that police administration was efficient and honest, and that police behaviour was correct, decent and respectful of human rights. His staff paid unannounced visits to police stations, in particular during the investigation of a human rights violation.

24. The Government had taken due note of the question raised about the outcome of torture complaints. It would consult the competent national bodies and would forward the requested information to the Committee at a later date.

25. As to whether the public were provided with sufficient and clear information on the right to submit a complaint, the Office of the Procurator for the Protection of Human Rights, the Office of the Attorney-General of the Republic and the National Department of the Family were the principal agencies responsible for disseminating human rights information to the public. In addition, the technical cooperation programme of UNHCHR had published pocket-size bulletins on human rights standards, international humanitarian standards, the Convention on the Rights of the Child, national and international laws concerning violence and discrimination against women, the Universal Declaration of Human Rights, national and international prison standards, national and international standards regarding young offenders, and international human rights standards regarding the application of laws. It had also produced educational pamphlets on rights and duties of individuals, children's rights and duties, women's rights, the principal human rights instruments in force in El Salvador, and the rights and obligations of persons deprived of their liberty and of prison staff. The delegation had brought copies for Committee members to consult.

26. Pamphlets on the rights and obligations of persons deprived of their liberty were prominently displayed in all places of detention, and clearly explained how to consult the prison supervision judges.

27. Turning to questions raised by Mr. Rasmussen, he said that the National Civil Police had medical staff which provided treatment for detainees when necessary, as for example when a detainee violently resisted arrest. If a detainee required surgical attention, he was sent to a hospital. When a detainee was transferred to facilities of the National Civil Police, he was examined to determine whether or not he had been injured. If, when he was brought before a judge, which must be done within 72 hours, he stated that he had been beaten, he was examined within the following 24 hours by a forensic medical specialist, whose findings formed the basis for judicial and administrative proceedings to determine whether he had been subjected to torture or cruel or arbitrary acts. If a detainee showed injuries or bruises, he received immediate medical attention.

28. Medical reports were filed with other medical documents; reports drawn up by the forensic medical specialist were handled in accordance with law.

29. When a detainee arrived at a prison with minor injuries, he was treated by the prison clinic, and the local police disciplinary board was so informed, in accordance with the provisions of the Prisons Act. If, however, he was seriously injured, he was taken to the nearest hospital and the Attorney-General was informed so that an appropriate investigation could be conducted.

30. With regard to the question raised about prison capacity, the relevant data would be forwarded to the Committee promptly. The Ilobasco prison had a capacity of 250 prisoners, with an admission and a temporary detention facility.

31. There was a register of cases of inter-prisoner and other violence in all prisons, and it was readily accessible.

32. Replying to questions raised by Ms. Gaer, he said that although the National Civil Police had its own organizational structure, and was the only institution providing security services throughout the country, it was supported by local police forces, which secured such public properties as markets, parks and public squares. There were also private security companies serving businesses and homes on a contractual basis. The Salvadoran armed forces carried out police duties only in exceptional circumstances, in accordance with the Constitution and subject to authorization by the President. Recently, the armed forces had begun, in a limited way, to assist the National Civil Police in combating the drug traffic and organized crime: units of one or two police officers accompanied by members of the military were carrying out rural, maritime and air operations for that purpose.

33. The recruitment and hiring of police officers was supervised by the National Public Security Academy, and selection and promotion were carried out in accordance with laws governing the National Civil Police. After an applicant had completed an academic course of nine months for beginners and one year for higher ranks, he appeared before an admissions and promotion court, which checked his criminal and behaviour records and conducted other tests. An individual who had been suspended with or without pay or dismissed or suspended from his post could not be hired by the National Civil Police.

34. The Government would forward in due course the information requested regarding persons detained as a result of the traffic in immigrants.

35. In accordance with the Code of Criminal Procedure, an accused person had the right to be immediately informed in a comprehensible manner of the reasons for his detention and advised what authority had arrested him; to choose what person or entity should be advised at once of his arrest; to be assisted by a lawyer of his choice or by a public defender; and to be brought within the legal time limit before a judge or another official authorized under the law to carry out judicial duties; to refuse to make a statement; not to be subjected to actions that infringed on his dignity; not to be subjected to methods or techniques that interfered with his free will; not to be subjected to measures that inhibited his necessary freedom of movement at the place and during the time of the trial, except in cases where special supervisory measures were determined to be necessary by the judge or prosecutor; and, if he did not speak Spanish, to be assisted by an interpreter.

36. The accused must be immediately informed of those rights in a comprehensible manner by prosecutors, judges or police, who must record that they had done so. That measure was the exclusive responsibility of the prosecutor directing the investigation or of the judge, as the case might be.

37. The Code of Criminal Procedure also provided that police officers or agents must, when making arrests, strictly conform to certain standards of conduct. They must not use force, except when strictly necessary and only as needed to make the arrest; not use arms, except if the accused resisted in a way that threatened the life or physical integrity of persons or if so required to prevent the commission of another crime; not inflict, encourage or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, during arrest or detention; and not display detainees publicly in a way that infringed on their dignity. In addition, at the time of arrest they must identify themselves as police officers and verify the identity of the person or persons they were arresting, except in the case of a person caught in flagrante delicto. At the time of the arrest, they must inform the person of all of his rights; immediately inform the family or friends of the accused of the place of detention; and enter the place, date, and hour of the detention in a permanent register. In addition, they must comply with standards of conduct prescribed in other laws.

38. As to whether cases of sexual violence in prison were monitored, whether any person had been convicted of such a crime, and whether there were any awareness programmes for handling women victims, the Government would supply answers at a later date.

39. Finally, the Salvadoran Government would also provide a written text of its replies, including any additional information it deemed useful.

40. The delegation of El Salvador withdrew.

The public part of the meeting rose at 4.25 p.m.